IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 5 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHORKUMAR BABUBHAI THAKKAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 5 of 2001

NOTICE SERVED for Petitioner No. 1

MR BD DESAI PUBLIC PROSECUTOR for Respondent No. 1

MR MAHESH BHAVSAR for Respondent No. 2

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 12/02/2002

ORAL JUDGEMENT

#. The petitioner herein has preferred this Revision Application under Section 397 read with 401 of

the Criminal Procedure Code, 1973, challenging the judgments and orders of the two Courts below.

#. The petitioner was prosecuted before the learned JMFC, Bhavnagar in Criminal Case No.734/1994 for an offence punishable under Section 138 of the Negotiable Instruments Act. It was alleged against him that the petitioner was advanced a loan of Rs.50,000/- by the original complainant on 30.9.1993 and the petitioner had agreed to repay the same very shortly. He had also given in writing to that effect in favour of the original complainant. The petitioner also executed a promissory note for the said amount in favour of the original complainant and, thereafter, the petitioner also executed a cheque dated 1.1.1994 bearing No.714027 addressed to the Syndicate Bank, Bhavnagar. The original complainant deposited the said cheque before the Bank for having credit of the said amount of cheque in his account. However, on 3.1.1994 the cheque was dishonoured by the said bank on the ground that there was no sufficient fund in the account of the petitioner. The original complainant thereafter issued notice on 5.1.1994 to the present petitioner which was duly served. Despite the service of notice the petitioner neither replied nor complied with the said notice and, therefore, the original complainant filed the aforesaid private complaint before the above Court.

#. After recording evidence and hearing arguments learned Magistrate found that the petitioner had committed an offence punishable under Section 138 of the said Act. Therefore, the learned Magistrate convicted him for the said offence and sentenced him to suffer S.I. for 2 months and directed him to pay fine of Rs.10,000/-. In case of non payment of fine the petitioner was directed to suffer S.I. for 1 month. The learned Magistrate further directed that on receipt of the amount of the fine an amount of Rs.8,000/- be paid to the original complainant by way of compensation.

#. Feeling aggrieved by the aforesaid judgment and conviction order dated 3.7.1998 the petitioner preferred Criminal Appeal No.7/1998 before the Sessions Court, Bhavnagar. The learned Additional Sessions Judge, partly allowed the said appeal of the petitioner by judgment and order dated 27.10.2000. The learned Additional Sessions Judge confirmed the judgment and conviction order of the petitioner for an offence punishable under Section 138 of the said Act. However, so far as the amount of fine is concerned the learned Additional Sessions Judge reduced the amount of fine to Rs.5,000/and directed the

petitioner to suffer S.I. for 15 days in default of payment of fine. The learned Additional Sessions Judge further directed that on receipt of amount of fine an amount of Rs.4,000/- be paid to the original complainant by way of compensation.

#. Feeling aggrieved by the aforesaid judgment and order dated 27.10.2000 recorded by the learned Additional Sessions Judge, Bhavnagar the petitioner had preferred this Revision Application before this Court. The petitioner has contended that there is apparent illegality in appreciation of evidence by the two Courts below and, therefore, the judgments and conviction orders are illegal and deserve to be set aside. The petitioner has, therefore, prayed that the judgments and orders of the two Courts below be quashed and set aside.

#. On receipt of the aforesaid Revision Application rule was issued and the petitioner was directed to be continued on bail. Learned APP Mr.B.D.Desai, appears for respondent No.1 - State of Gujarat and Mr.Mahesh Bhavsar L.A. appears for respondent No.2 - original complainant.

#. In fact, the Revision Application was filed by Mr.Bhargav Bhatt, learned advocate for the petitioner. However, since the petitioner did not remain in touch with Mr.Bhatt, he was permitted to retire from the present proceeding. Thereafter, the petitioner was served with notice for due appearance in the matter. However, the petitioner has thought it fit not to appear before this Court. Thereafter, also matter was adjourned and despite service of notice the petitioner has not thought it proper to appear and contest this Revision Application.

#. I have heard Mr.Mahesh Bhavsar, learned advocate for original complainant and Mr.B.D.Desai, learned APP for the State and have perused the papers.

#. On going through the judgments and orders of the two Courts below it is apparent that the original complainant had produced sufficient material before the trial Court. The cheque in question and the notice both have been produced on record and both have been proved in accordance with the provisions of Evidence Act. Even the service of notice has been admitted by the petitioner during the course of his further statement recorded under Section 313 of the said Code. It was not the defence of the petitioner that he had paid the amount of the cheque after receipt of the notice in question. Therefore, it is apparent on the face of record that due process and

procedure were followed and the cheque in question was dishonoured and yet no arrangement was made by the petitioner for the payment of the amount stated in the cheque in question. Therefore, the two Courts below were justified in holding that the petitioner had committed the offence in question.

##. It is true that the learned Magistrate has directed the petitioner to pay fine of Rs.10,000/-. Under the Criminal Procedure Code the said learned Magistrate was not authorised to impose fine of Rs.10,000/-. It seems that this aspect has been properly considered by the learned Additional Sessions Judge and, therefore, the amount of fine has been reduced to Rs.5,000/-. This shows that sufficient care was taken by the learned Additional Sessions Judge also while disposing of the appeal before him.

##. This is after all a matter of Revision and the powers, functions and jurisdiction of this Court exercising revisional powers and jurisdiction are very limited. It is not open to this Court to differ from the view taken by the two Courts below unless it is found that the findings of fact recorded by the two Courts below are apparently wrong and against the weight of evidence on record. The findings of facts are not found to be against the weight of evidence on record. Therefore, there is no reason to interfere with the concurrent finding of fact recorded by two Courts below. This shows that there is no substance in the present Revision Application. The Revision Application is accordingly dismissed and the judgments and conviction orders of the two Courts below are confirmed. The petitioner is on bail and, therefore, he shall forthwith surrender. In case he does not surrender within 4 weeks non-bailable warrant shall be issued against him. Intimation to the surety shall be issued with a view to have proper compliance of this order. Rule is discharged.

(D. P. BUCH, J.)